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STAFF REPORT
SECTIONS A14-14 THRU A14-25 OF THE SUFFOLK COUNTY ADMINISTRATIVE CODE

Applicant: Waterfront Moratorium
Municipality: Inc. Village of Northport
Location: Shoreline along Northport from the east bank of Northport Harbor to the east bank of Northport Bay

Received: 11/16/22
File Number: Np-22-01

Jurisdiction: Moratorium – along the shoreline of Suffolk County

PROPOSAL DETAILS

OVERVIEW – Referral from the Inc. Village of Northport Board of Trustees for a proposed twelve-month moratorium relating to Buildings and Structures at the Village shoreline. No application will be accepted or processed or any permit or approval be issued, by the Board of Trustees, the Village of Northport Zoning Board of Appeals or any other board, department, officer or employee of the Village, calling for the construction modification, alteration, or enlargement of any building or structure located within twenty (20) feet of the mean High-water mark of Northport Harbor within the Village of Northport.

The proposed moratorium is applicable to multiple properties fronting along Northport Harbor within the Village of Northport and includes the eastern shorelines of Northport Harbor and within the zoning categories of Marine Business, Municipal Park, Residence A, Residence B, and Residence C (see attached Inc. Village of Northport zoning map).

As per information referred to the Suffolk County Planning Commission from the Inc. Village of Northport, pursuant to 6 NYCRR 617.5(c)(36), the proposed local law is a Type II Action exempt from environmental review pursuant to the State Environmental Quality Review Act (SEQRA). Accordingly, no environmental assessment form has been prepared.

STAFF ANALYSIS

As indicated in referral material from the Inc. Village of Northport to the Suffolk County Planning Commission, the Village Board of Trustees find that:

1. There has been a recent proliferation of new and proposed development along the waterfront in the Village of Northport.
2. Certain development, if left unchecked poses the threat of permanent negative effect upon the Village's waterfront in the form of degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public among others.
3. The village is currently engaged in the process of updating its Comprehensive Plan.
4. It will be in the best interests of the Village, its residents, and the public at large to impose a moratorium.

In addition to the proposed enactment of the twelve-month time frame of the moratorium, the "law further provides for one six-month extension of the moratorium by resolution of the Board of Trustees." This clause effectively makes the moratorium an eighteen (18) month moratorium. This is especially so if the moratorium is tied to the process of updating the Village's Comprehensive Plan.

It is the belief of the staff that the proposed twelve-to-eighteen-month moratorium is not sufficient time to permit the Village to update its Comprehensive Plan. In fact, if the intent is to keep the moratorium in effect until the Comprehensive Plan is adopted, it may take several years to complete this process.

As indicated in the Suffolk County Planning Commission Advisory News (Volume 2 Issue 1) a moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of land owners to use their property.

From the perspective of the Suffolk County Planning Commission a limited or narrowly scoped moratorium generally does not involve regional or inter-community impacts of an adverse nature and generally are considered matters for local determination. The Suffolk County Planning Commission has published guidance on the structure and content of moratoria. The moratorium should be tied to a legitimate planning initiative. Where possible the moratorium should be limited and allow for the due process of applications and assure the proper balance between property rights and community planning. The moratorium should not be used to delay controversial development applications.

The dynamics of the coastal barrier and the hazards to property and infrastructure in these areas are generally well known and therefore the Local Law should not be too severely criticized for the brevity of the findings that confirm the necessity of this moratorium. However, the Local Law does not point out other alternatives to the moratorium considered and rejected or the urgency of the conditions necessitating the moratorium now as opposed to those conditions existing in the past.

The Moratorium language notes "a recent proliferation of new and proposed development along the waterfront in the Village of Northport." However, Suffolk County Planning Commission referral logs do not show an increase in NYS GML 239 or Suffolk County Administrative Code (Article XIV) required site plans, special permits or variance petition referrals from the Village of Northport as would be expected since actions within 500 feet of the shoreline require, by law, a referral to the Commission. Also, there is no Inter-municipal Agreement between the County Planning Commission and the Village of Northport (similar to other Villages and Towns in Suffolk) which is an initiative to reduce paperwork and staff time required for the review of minor matters that must be referred to the Commission. Therefore, it is the belief of the staff of the

Suffolk County Planning Commission that, the applicability of the moratorium appears to be to bulkheads and other shore line hardenings, docks and boathouses, etc. that may be within 20 feet of mean high water and referred to as “structures and buildings” in the Local Law. The moratorium can be more specific in its legislative intent.

Village goals or objectives enumerated in the moratorium as written, appear to be limited to preventing “degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public, among others.” It is not clear what nexus there is to new buildings and structures within 20 feet of mean high water on the views and use and enjoyment of the waterfront by residents and the public. There are no less than fourteen (14) “recreation and open space” locations along the waterfront in the Village of Northport. In addition, there is only one (1) privately held vacant lot along the waterfront of the Village that may pose future or pending development. This does not seem to support a Village wide impact regarding “degraded views”, nor does it indicate a “recent proliferation of new and proposed development along the waterfront in the Village of Northport.” It is not clear what the pressing or urgent issues are warranting a moratorium. The targeted goal and objective of the moratorium local law should be clarified.

It is the belief of the staff of the Suffolk County Planning Commission that the proposed Local Law Section regarding exemption could be further clarified to include language to the effect that:

This moratorium shall not affect applications which have already been scheduled for public hearing or

- The issuance of a demolition/building permit required in connection with the ordinary repairs and/or maintenance of a structure for which there exists a valid certificate of occupancy,
- The issuance of a demolition/building permit for interior renovations in connection with property (provided there is no change in facade appearance or parking requirements), for which there exists a valid certificate of occupancy.
- The issuance of a building permit in connection with a project, which obtained prior site plan approval or approval prior to the effective date of the moratorium.

In addition, it is the belief of the staff that the “Hardship” (Section 5.) provisions should be embellished to include more objective standards including but not limited to the following examples:

- Submission of proof of hardship. Hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a building permit, site plan, subdivision, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
- Substantive requirements. No relief shall be granted hereunder unless the Village Board shall specifically find and determine and shall set forth in its resolution granting such hardship that:
 - Failure to grant a hardship to the petitioner will cause the petitioner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the exemption; and

- Petitioners circumstances are different from any other member of the community to the extent the petitioner is burdened by the moratorium substantially greater than any other member of the community; and
- Grant of the hardship will clearly have no adverse effect upon any of the Village goals or objectives enumerated in the moratorium; and
- The project or activity for which the petitioner seeks a hardship will be in harmony with the existing character of the Village as a whole and the area of the Village in which the affected land is located, and will be consistent with any interim data, recommendations, or conclusions which may be drawn from any community planning effort then in progress or under review.

The Incorporated Village of Northport may wish to consider the Suffolk County Planning Commission guidelines on Climate Change found in the Suffolk County Planning Commission Guidebook section 4.10, adopted by the Commission on August 4, 2021. For convenience of the public, Suffolk County has made available through this section a [web map now in a web app](#):

<https://gis.suffolkcountyny.gov/portal/apps/webappviewer/index.html?id=3335037e07594e8aa4462e2978959ba6>

The web map indicates tax map parcels likely to be inundated by flood waters (Please note that this link may not be active due to technical issues within Suffolk County). Rising sea levels, coastal flooding, coastal erosion, drought and wildfires, more frequent hurricanes and heavy rain events with local street flooding, severe winter storms, surface water eutrophication and ocean nitrification are some climate change issues presenting itself in Suffolk County. Zoning codes, Local Waterfront Revitalization Plans, and building regulations are various methodologies (individually or combined) to implement coastal best management practices.

STAFF RECOMMENDATION

Disapproval of the Inc. Village of Northport proposed Local Law No. 2; **Village of Northport Waterfront Moratorium**, to impose an 18 month (twelve months plus one six month extension) suspension on land use applications so that “no application will be accepted or processed or any permit or approval be issued, by the Board of Trustees, the Village of Northport Zoning Board of Appeals or any other board, department, officer or employee of the Village, calling for the construction modification, alteration, or enlargement of any building or structure located within twenty (20) feet of the mean High-water mark of Northport Harbor or Northport,” with the following comments.

A moratorium is, from one perspective, the most extreme land use action that a municipality can take because it suspends completely the rights of owners to use their property.

1. It is the belief of the staff that the proposed twelve-to-eighteen-month moratorium is not sufficient time to permit the Village to update its Comprehensive Plan. In fact, if the intent is to keep the moratorium in effect until the Comprehensive Plan is adopted, it may take several years to complete this process. (see SCPC report).
2. There does not appear to be findings of fact that confirm the necessity of the action or how serious and urgent these circumstances are. The Moratorium language notes “a recent proliferation of new and proposed development along the waterfront in the Village of Northport.” The assertion is not supported by trend data or processing volume. It is the belief of the staff of the Suffolk County Planning Commission that, the applicability of

the moratorium appears to be to bulkheads and other shore line hardenings, docks and boathouses, etc. that may be within 20 feet of mean high water and referred to as “structures and buildings” in the Local Law. The moratorium can be more specific in its legislative intent.

3. No finding in the moratorium discusses that there are no other alternatives, less burdensome on property rights than a moratorium.
4. There are no findings that indicate why the existing land use ordinances are not adequate. Village goals or objectives enumerated in the moratorium as written, appear to be limited to preventing “degraded views and diminishment of the use and enjoyment of the waterfront by residents and members of the public, among others.” It is not clear what nexus there is to new buildings and structures, within 20 feet of mean high water, on the views and use and enjoyment of the waterfront by residents and the public. There are no less than seven 14 “recreation and open space” locations along the waterfront in the Village of Northport. In addition, there is only one (1) privately held vacant lot along the waterfront of the Village that may pose future or pending development. This does not seem to support a Village wide impact regarding “degraded views”, nor does it indicate a “recent proliferation of new and proposed development along the waterfront in the Village of Northport.” It is not clear what the pressing or urgent issues are warranting a moratorium. The targeted goal and objective of the moratorium local law should be clarified.

Comments:

1. It is the belief of the staff of the Suffolk County Planning Commission that the proposed Local Law Section regarding exemptions and hardships could be further clarified (see SCPC staff report).
2. The Incorporated Village of Northport may wish to consider the Suffolk County Planning Commission guidelines on Climate Change found in the Suffolk County Planning Commission Guidebook section 4.10. For convenience of the public, Suffolk County has made available through this section a [web map now in a web app](#):

<https://gis.suffolkcountyny.gov/portal/apps/webappviewer/index.html?id=3335037e07594e8aa4462e2978959ba6>

3. The web map indicates tax map parcels likely to be inundated by flood waters (Please note that this link may not be active due to technical issues within Suffolk County).
4. As per information referred to the Suffolk County Planning Commission from the Inc. Village of Northport, pursuant to 6 NYCRR 617.5(c)(36), the proposed local law is a Type II Action exempt from environmental review pursuant to the State Environmental Quality Review Act (SEQRA). Accordingly, no environmental assessment form has been prepared. It should be noted that suspension of regulated shoreline activities intended to prevent erosion, flooding, etc., may allow such adverse environmental impacts to continue on the coastal properties within the Village. While the SEQRA determination may be technically correct it does not imply that the effect of the proposed moratorium, over its duration, will not have an adverse effect on the coastal environment. A finding in the proposed moratorium language should be made toward the assessment of the suspension of regulated activities on certain known problematic properties.